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COATS & BENNETT, PLLC			ZEENDER, FLORIAN M	
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3627

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GROUP 3600

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/680,678
Filing Date: October 07, 2003
Appellant(s): CRONE, JAMES C.

Edward H. Green, III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 1, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: Claims 1-7 and 9-10 are rejected under 35 U.S.C 101 as being directed to non-statutory subject matter.

(7) *Grouping of Claims*

The rejection of claims 1-20 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,724,518	Helbling	03-1998
6,088,682	Burke	07-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 and 9-10 are rejected under 35 U.S.C. 101. This rejection is set forth in a prior Office Action, mailed on 2/2/2005.

Claims 1-6, 11-14, and 19-20 are rejected under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 2/2/2005.

Claims 7-10 and 15-18 are rejected under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 2/2/2005.

(11) Response to Argument

Response to the argument relating to the 101 ground of rejection.

Because the appellant has not stated or argued that the rejected claims do not stand and fall together, it will be assumed that the claims do stand and fall together. Therefore, this response is directed to the broadest claim which is claim 1.

The invention in the body of process claim 1 does not recite technology and is not tied to any technological art, environment, or machine. Therefore, the claim is directed to non-statutory subject matter. The Board has provided guidance with respect to this issue in previous decisions (*Ex parte Bowman*); (See Examiner's Office Action mailed 2/2/05; "Response to Arguments").

Response to the argument relating to the 103 rejection over Helbling:

Because the appellant has not stated or argued that the rejected claims do not stand and fall together, it will be assumed that the claims do stand and fall together. Therefore, this response is directed to the broadest claim, which is **claim 11**.

Examiner's first interpretation of claim 11:

Claim 11 is a **system** claim. In a system claim, the apparatus has to be capable of performing the claimed function. The prior art, Helbling discloses an apparatus that is capable of performing the claimed function. Namely, Helbling, at least obviously, teaches a system (**see the disclosed figure**) for facilitating charitable donations by a restaurant customer comprising: 1) a point of sale station 10 operative to process and record the sale of a reduced-portion meal product (**for example a burger without mayonnaise, pickles, lettuce, and tomatoes**) at the price of a corresponding full-portion meal product (**i.e., the burger including the usual condiments**); 2) a database (within computer 13) operative to record the sales transaction including funds received pursuant to the transaction (See Helbling Col. 4, lines 22-41); 3) a financial transaction processor (within computer 13) operative to transfer 16 funds to a charitable organization 18 on behalf of the customer purchasing the product. Helbling clearly discloses the elements of the system of claim 11 and each element, at least obviously, is capable of performing the associated function as claimed. Thus, the prior art anticipates the limitations of the claim and the rejection should be affirmed.

Examiner's second interpretation of claim 11:

If it were argued that a burger without condiments (*note element "1" in the paragraph above*) does not qualify as a "reduced-portion meal product", Helbling still anticipates the claim. Specifically, Helbling teaches a point of sale station 10 **that is fully capable** of processing and recording the sale of a reduced-portion meal product (**i.e., a burger, fries, without a beverage**) at the price of a corresponding full-portion meal product (**i.e., price of the burger, fries, and beverage; where the amount of charitable donation equals the price of the beverage**). This scenario, as discussed in the Office action mailed 2/2/05, anticipates the "point of sale station" functional limitation in system claim 11.

Appellant argues on page 10 of his Brief that Helbling does not teach selling a "reduced-portion meal" product and that Examiner uses impermissible hindsight. However, as noted above with respect to claim 11, Helbling does teach a system having elements capability of performing the functions claimed. No hindsight is necessary. Most of the additional arguments made by the appellant are not pertinent to **system claim 11**. Again, the **prior art system** only has to be **capable** of performing the functions, which Helbling does without necessitating hindsight.

Applicant further argues on pages 16-18 that the Applicant's specification clearly defines a reduced-portion meal product as having the same elements as its corresponding full-portion meal product, but in reduced quantities. Thus, the appellant states that the Examiner's argument (**second interpretation of claim 11**) where the reduce-portion meal product is interpreted to be a meal without a beverage, is incorrect because the reduced portion meal does not comprise the same elements as the full

portion meal. However, the Examiner maintains his argument stated in the Final Office action that the Appellant's definition is not clearly defined, but is made ambiguous by the statement in the specification on page 5, lines 18-20, stating that *"those skilled in the art will readily recognize that a wide variety of reduced-portion meal product configurations, with concomitant cost and price structures, as well as operating fees, are possible within the broad practice of the present invention"*. The examples given in the specification, which Appellant relies on in his arguments, are just that, **"examples"**, that do **not** provide a clear definition of the terminology, "reduced-portion meal product".

Response to argument relating to the 103 rejection over Helbling in combination with Burke:

The arguments with respect to claims 7-10 and 15-18 are moot as the Appellant has **not stated or argued** that all claims do not stand and fall together. Thus, it is assumed that the claims are **not separately patentable**. The broadest claim continues to be claim 11, as claims 7-10 and 15-18 are dependent claims, and the response to arguments for claim 11 given above apply.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

 4/24/05

Florian (Ryan) Zeender
April 24, 2005

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